

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE INVESTIGATION)
INTO THE ADOPTION OF PROPOSED)
RULES AND REGULATIONS TO ACCOMPLISH)
INTEGRATED RESOURCE PLANNING FOR THE) PSC REGULATION
PROVISION OF STANDARD OFFER SERVICE) DOCKET NO. 60
BY DELMARVA POWER & LIGHT COMPANY)
UNDER 26 DEL. C. § 1007(c) & (d))
)

**POST-HEARING WRITTEN COMMENTS
OF DELMARVA POWER & LIGHT COMPANY
IN RESPONSE TO PROPOSED REGULATIONS SUBMITTED BY
STAFF OF THE DELAWARE PUBLIC SERVICE COMMISSION**

Pursuant to Order No. 7318 in this Regulation Docket and the directive of Senior Hearing Examiner Ruth A. Price, Delmarva Power & Light Company (“Delmarva”) hereby submits the following Post-Hearing Written Comments in response to Proposed Integrated Resource Planning Regulations (the “Proposed Regulations”) submitted by Delaware Public Service Commission Staff (“Staff”).

Summary of Relevant Procedural History

1. This matter was opened by Commission Order No. 7263.
2. Pursuant to Commission Order No. 7318 and the Delaware Administrative Procedures Act (the “APA”),¹ Staff’s Proposed Regulations were published in the Delaware Register of Regulations (the “Delaware Register”) and a Notice of Proposed Rule Making was published in the News Journal and the Delaware State News on or about December 19, 2007.

¹ 29 Del. C. § 10111 *et seq.*

3. In addition, a copy of each relevant Order was placed prominently on the Commission's web site.²

4. Pursuant to the schedule, Delmarva filed written comments to Staff's Proposed Regulations on February 1, 2008.

5. Two other interveners filed comments on February 1, 2008: the Clean Air Council ("CAC") and the Delaware Energy Office. Neither Jeremy Firestone nor Allan Muller filed written comments.³

6. Delmarva's written comments suggested modifications, provided specific proposed language using a strikethrough/underlining format, and explained the reasoning for its requested changes.

7. The Delaware Energy Office provided specific suggestions and the reasons therefore, including a list of the specific changes it requested: the deletion of

² In an email to Hearing Examiner Price, Jeremy Firestone stated: *"to the best of my knowledge and belief I was never served we [sic] a copy of the December 4 Order, 7318. Nor was I able to attend the PSC hearing that day, December 4. I only learned of the process, the ability to comment, and the hearing recently-I believe at or around the time that comments were filed on February 1. I was surprised when I learned of the process."* (email from J. Firestone to R.A. Price, 03/11/2008, 04:47 PM). Similar statements were again made by Mr. Firestone at the March 12, 2008 hearing. At the March 12th hearing, however, Hearing Examiner Price produced and read into the record the notice to all parties, including Mr. Firestone, which informed the parties of the due date of comments to the proposed Regulations as published in the Delaware Register. Moreover, the Proposed Regulations themselves, as well as the due date for responses, were published for the world to see, in the Delaware Register, in Delaware's two major newspapers, and on the Commission's website. Moreover, Mr. Firestone has been a participant in this docket since its early stages. He is, therefore, responsible for determining the most-basic dates in the publicly available schedule.

³ Mr. Mueller voiced his opinion that members of the "public" should not be required to comply with schedules and /or scheduling rules if they choose to participate in Commission proceedings. He further accused Commission Staff of engaging in improper "dealmaking" with Delmarva (email from A. Muller to R.A. Price, 03/11/2008, 02:42 PM). Mr. Muller's procedural suggestion is unrealistic and unworkable. His unfounded accusation is inappropriate, at best.

Section 5.7 and the addition of the phrase “Self-Generation” to Section 5.1 of Staff’s Proposed Regulations.

8. The counsel for CAC provided comment on numerous sections. With respect to specifics, however, the comments of the CAC were lacking. For example, counsel for CAC objected to the term “Acknowledgment,” but did not provide any suggested language (CAC Comments, p 1); counsel for CAC objected to the definition of “Price Stability,” but did not provide suggested revisions; counsel for CAC objected to the lack of definitions for the terms “resource options,” “demand forecast” and “energy forecast,” but did not provide any proposed language (CAC Comments pp 2-3); with respect to demand side management, CAC’s counsel wrote that Staff’s proposed regulation is “poorly drafted” and “should be rewritten,” yet proposed language was not provided (CAC Comments p 5).

9. At the March 12th hearing, Counsel for the CAC participated. Despite failing to file written comments to Staff’s Proposed Regulations, Jeremy Firestone and Allen Muller of Green Delaware also participated.

10. A due date for post-hearing written comments was set for March 31, 2008. These are Delmarva’s written comments.

Comments

11. As an initial matter, Delmarva is concerned that counsel for the CAC, Mr. Firestone and Mr. Muller will, for the first time on March 31, 2008, reveal their specific

relevant suggestions for changes to Staff's Proposed Regulations. Suggestions for any proposed changes to Staff's Proposed Regulations were due on February 1, 2008. The Delaware Energy Office and Delmarva were the only parties who fully complied with that deadline by: (1) providing specific language for their suggested changes, and (2) providing the specific reasons therefore.

12. While counsel for CAC filed comments on February 1st, those comments were non-specific. For the most part, the comments merely criticized the Proposed Regulations without providing the parties with any substantive proposed language. As previously stated, Jeremy Firestone and Allan Muller filed nothing.

13. If counsel for CAC, Mr. Firestone and/or Mr. Mueller are permitted to submit proposed language to alter Staff's Proposed Regulations for the first time on March 31, 2008 and such proposals are considered, they will have effectively sandbagged Staff, Delmarva, the Energy Office and the Commission. In other words, counsel for CAC, Mr. Firestone and Mr. Mueller will have been permitted to withhold their proposed changes until two months after the February 1st due date and several weeks after the evidentiary hearing on proposed changes has been conducted. If any proposed changes are submitted for the first time on March 31st, Staff, the Energy Office and Delmarva will have been denied their rights under the APA to challenge the proposed changes at the March 12th hearing.⁴ As such, any proposed changes or language provided for the first time in Post-Hearing Written Comments should be rejected.

⁴ See, 29 *Del. C.* § 10117

14. Finally, to the extent any post-hearing written comments containing arguments or suggested language not contained in written comments due on February 1, 2008 are considered by the Hearing Examiner, all participants must be held to the directive of Hearing Examiner Price that written comments be limited only to issues raised and proposed rules discussed at the March 12th hearing. (March 12, 2008 Transcript, p. 168, lines 13-15).

15. Delmarva supports Staffs' Proposed Regulations addressed at the March 12, 2008 hearing. Staff followed the Orders of the Commission and the APA.⁵ All parties were provided with equal opportunity to provide written comments in compliance with the Orders and the APA. Staff considered the parties' comments filed on February 1st and incorporated many of the written comments into the Proposed Regulations. Staff was available for cross-examination on March 12, 2008 and responded to questions posed by the parties. While Delmarva does not necessarily agree that each and every Proposed Regulation is ideal, Delmarva is confident that Staff fairly considered the February 1st comments of all parties who filed them and conscientiously incorporated many of the requests into the Proposed Regulations.

16. The process followed complies with principles of due process. It is apparent that the members of Commission Staff responsible for drafting the Proposed Regulations worked diligently and effectively on a challenging set of regulations and sought to treat all parties equally and fairly.

⁵ 29 Del. C. § 10111 *et seq*

Conclusion

17. Delmarva Power hereby respectfully requests that the Proposed Regulations, as addressed at the March 12, 2008 hearing, be adopted. Delmarva further requests that any proposed changes submitted by parties that were not specifically set forth by the February 1, 2008 deadline be rejected as violative of the Orders in this docket, as well as the due process rights of the parties that complied with the Commission Orders and the requirements of the APA.

Respectfully Submitted,

/s/ Todd L. Goodman

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cc: Service List (via email only)